

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MULTICARE HEALTH SYSTEM, a
Washington non-profit,

Plaintiff/Counterclaim
Defendant,

v.

CHS WASHINGTON HOLDINGS,
LLC, a Delaware limited liability
company, and CHS/COMMUNITY
HEALTH SYSTEMS, INC., a Delaware
corporation,

Defendants/Counterclaim
Plaintiffs.

NO. 2:22-CV-0007-TOR

STIPULATED PROTECTIVE ORDER

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1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection may be warranted.
4 Accordingly, the parties hereby stipulate to and petition the Court to enter the
5 following Stipulated Protective Order (hereinafter “Protective Order”). The parties
6 acknowledge that this Protective Order does not confer blanket protection on all
7 disclosures or responses to discovery; the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles, and it does not
10 presumptively entitle parties to file Confidential Information (as defined below)
11 under seal.

12 2. CONFIDENTIAL INFORMATION

13 “Confidential Information” shall include the following documents and
14 tangible things produced or otherwise exchanged: (a) copies of the parties’ insurance
15 agreements and terms therein; (b) information prohibited from disclosure by statute;
16 (c) non-public information about either party’s proprietary business practices;
17 (d) non-public information about revenue, pricing, profitability, loss, or
18 competition-sensitive material; and (e) non-public personal information of
19 individuals, including medical information, tax information, and personnel records.
20 Information or documents that are available to the public may not be designated as

1 “Confidential.” In the event either party produces documents designated as
2 “Confidential” that the other believes do not fall within one of the above categories,
3 the parties will meet and confer to confirm the propriety of the designation or the
4 necessity of proposing an amendment to this Protective Order.

5 3. SCOPE

6 The protections conferred by this Protective Order cover not only Confidential
7 Information, but also (1) any information copied or extracted from Confidential
8 Information; (2) all copies, excerpts, summaries, or compilations of Confidential
9 Information; and (3) any testimony, conversations, or presentations by parties or
10 their counsel that might reveal Confidential Information.

11 However, the protections conferred by this Protective Order do not cover
12 information that is in the public domain or becomes part of the public domain
13 through trial or otherwise.

14 4. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

15 4.1 Basic Principles. A receiving party may use Confidential Information
16 that is disclosed or produced by another party or by a non-party in connection with
17 this case only for prosecuting, defending, or attempting to settle this litigation.
18 Confidential Information may be disclosed only to the categories of persons and
19 under the conditions described in this Protective Order. Confidential Information
20 must be stored and maintained by a receiving party at a location and in a secure

1 manner that ensures that access is limited to the persons authorized under this
2 Protective Order.

3 4.2 Disclosure of Confidential Information. Unless otherwise ordered by
4 the Court or permitted in writing by the designating party, a receiving party may
5 disclose any Confidential Information only to:

6 (a) the receiving party's counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the information
8 for this litigation;

9 (b) the officers, directors, and employees (including in-house
10 counsel) of the receiving party to whom disclosure is reasonably necessary for this
11 litigation;

12 (c) experts and consultants to whom disclosure is reasonably
13 necessary for this litigation and who have signed the "Acknowledgment and
14 Agreement to Be Bound" (Exhibit A);

15 (d) the Court, court personnel, and court reporters and their staff;

16 (e) copy, imaging, or e-discovery services retained by counsel to
17 assist in the duplication of Confidential Information, provided that counsel for the
18 party retaining those vendors instructs the vendors not to disclose any Confidential
19 Information to third parties and to immediately return all originals and copies of any
20 Confidential Information upon the conclusion of the above-captioned action;

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1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating
4 party or ordered by the Court. Pages of transcribed deposition testimony or exhibits
5 to depositions that reveal Confidential Information must be separately bound by the
6 court reporter and may not be disclosed to anyone except as permitted under this
7 Protective Order; and

8 (g) the author or recipient of a document containing the information
9 or a custodian or other person who otherwise possessed or knew the information.

10 4.3 Filing Confidential Information. Before filing Confidential Information
11 or discussing or referencing such material in court filings, the filing party shall
12 confer with the designating party to determine whether the designating party will
13 remove the “Confidential” designation, whether the document can be redacted, or
14 whether the documents should be filed under seal. During the meet-and-confer
15 process, the designating party must identify the basis for sealing the specific
16 Confidential Information at issue. The filing party then must file the Confidential
17 Information under seal, noting in its substantive filing (e.g., dispositive or non-
18 dispositive motion) whether it stipulates or objects to filing the document under seal.
19 If the filing party objects to the “Confidentiality” designation and/or filing the
20 documents under seal, it can elect to follow the procedures outlined in Section 6

1 below. The designating party, in response, then must set forth “compelling reasons”
2 (in response to a dispositive motion) or “good cause” (in response to a non-
3 dispositive motion) to seal consistent with Paragraph 6.C of the Bench Trial
4 Scheduling Order, *see* ECF No. 21.¹

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each party or non-party that designates information or items for protection under
8 this Protective Order must take care to limit any such designation to specific material
9 that qualifies under the appropriate standards. The designating party must designate
10 for protection only those parts of material, documents, items, or oral or written
11 communications that qualify, so that other portions of the material, documents,
12 items, or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Protective Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper

16
17 ¹ The parties understand, based on the Court’s “Procedures for the Filing of
18 Sealed and Ex Parte Documents For Civil Cases (Rev. 10/2/2020),” that Judge Rice
19 does not require parties in civil or criminal cases to seek leave of Court to file a
20 sealed document or submit proposed sealed documents.

1 purpose (e.g., to unnecessarily encumber or delay the case development process or
2 to impose unnecessary expenses and burdens on other parties) expose the
3 designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Protective Order, or as otherwise stipulated or ordered, disclosure(s) or
9 discovery material that qualifies for protection under this Protective Order must be
10 clearly so designated before or when the material is disclosed or produced.

11 (a) Information in documentary form: (e.g., paper or electronic
12 documents and deposition exhibits, but excluding transcripts of depositions or other
13 pretrial or trial proceedings) the designating party must affix the word
14 "Confidential" to each page that contains Confidential Information.

15 (b) Testimony given in deposition or in other pretrial proceedings:
16 the parties and any participating non-parties must identify on the record, during the
17 deposition or other pretrial proceeding, all protected testimony, without prejudice to
18 their right to so designate other testimony after reviewing the transcript. Any party
19 or non-party may, within thirty (30) days after receiving the transcript of the
20 deposition or other pretrial proceeding, designate portions of the transcript, or

1 exhibits thereto, as “Confidential.” If a party or non-party desires to protect
2 Confidential Information at trial, the issue should be addressed during the pre-trial
3 conference.

4 (c) Other tangible items: the producing party must affix in a
5 prominent place on the exterior of the container or containers in which the
6 information or item is stored the word “Confidential.”

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the designating party’s right to secure protection under this Protective Order for such
10 material. Upon timely correction of a designation, the receiving party must make
11 reasonable efforts to ensure that the material is treated in accordance with the
12 provisions of this Protective Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a
15 designation of confidentiality at any time. Unless a prompt challenge to a
16 designating party’s confidentiality designation is necessary to avoid foreseeable,
17 substantial unfairness, unnecessary economic burdens, or a significant disruption or
18 delay of the litigation, a party does not waive its right to challenge a confidentiality
19 designation by electing not to mount a challenge promptly after the original
20 designation is disclosed.

1 6.2 Meet and Confer. The parties must make every attempt to resolve any
2 dispute regarding “Confidential” designations without court involvement. Any
3 motion regarding “Confidential” designations or for a protective order must include
4 a certification, in the motion or in a declaration or affidavit, that the movant has
5 engaged in a good-faith conference with other affected parties in an effort to resolve
6 the dispute without court action. The certification must list the date, manner, and
7 participants of the conference. A good-faith effort to confer requires a face-to-face
8 meeting or a video or telephone conference.

9 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
10 court intervention, the objecting party may file and serve a motion to contest
11 confidentiality, a “nondispositive motion” under Local Civil Rule 7. Frivolous
12 challenges, and those made for an improper purpose (e.g., to harass or impose
13 unnecessary expenses and burdens on other parties) may expose the challenging
14 party to sanctions. All parties shall continue to maintain the material in question as
15 “Confidential” until the Court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 “Confidential,” that party must:

6 (a) promptly notify the designating party in writing and include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
9 order to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall include
11 a copy of this Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose Confidential Information may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 Confidential Information to any person or in any circumstance not authorized under
17 this Protective Order, the receiving party must immediately (a) notify in writing the
18 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the protected material and ensure their destruction,
20 (c) inform the person or persons to whom unauthorized disclosures were made of all

1 the terms of this Protective Order, and (d) request that such person or persons execute
2 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
3 Exhibit A.

4 9. PRODUCTION OF PRIVILEGED OR OTHERWISE
5 PROTECTED MATERIAL

6 When a producing party gives notice to receiving parties that certain produced
7 material is subject to a claim of privilege or other protection, the obligations of the
8 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
9 This provision is not intended to modify whatever procedure may be established in
10 an e-discovery order or agreement that provides for production without prior
11 privilege review. The parties agree to the entry of a non-waiver order under Federal
12 Rule of Evidence 502(d) as set forth herein.

13 10. NON-TERMINATION AND RETURN OF DOCUMENTS

14 Within 60 days after the termination of this action, including all appeals, each
15 receiving party must return all Confidential Information to the producing party,
16 including all copies, extracts, and summaries thereof. Alternatively, the parties may
17 agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival
19 copy of all documents filed with the Court; trial, deposition, and hearing transcripts;
20 correspondence; deposition and trial exhibits; expert reports; attorney work product;

1 and consultant and expert work product, even if such materials contain Confidential
2 Information.

3 The confidentiality obligations imposed by this Protective Order shall remain
4 in effect until a designating party agrees otherwise in writing or a court orders
5 otherwise.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: August 30, 2022

8 CAIRNCROSS & HEMPELMANN, P.S. PERKINS COIE LLP
9

10 s/ Patricia A. Laughman [via email]
11 Ana-Maria Popp, WSBA No. 39614
12 E-mail: apopp@cairncross.com
13 Jennifer K. Faubion, WSBA No. 39880
14 E-mail: jfaubion@cairncross.com
15 Patricia A. Laughman, WSBA No. 46716
16 E-mail: plaughman@cairncross.com
17
18 524 Second Avenue, Suite 500
19 Seattle, WA 98104-2323
20 Telephone: (206) 587-0700
Facsimile: (206) 587-2308

Attorneys for Defendants/Counterclaim
Plaintiffs

s/ Michelle L. Maley
David B. Robbins, WSBA No. 13628
Email: DRobbins@perkinscoie.com
Michelle L. Maley, WSBA No. 51318
Email: MMaley@perkinscoie.com
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000

Attorneys for Plaintiff/Counterclaim
Defendant

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Federal Rule of Evidence
3 502(d), the production of any documents in this proceeding shall not, for the
4 purposes of this proceeding or any other federal or state proceeding, constitute a
5 waiver by the producing party of any privilege applicable to those documents,
6 including the attorney-client privilege, attorney work-product protection, or any
7 other privilege or protection recognized by law.

8 DATED: September 7, 2022.



Thomas O. Rice

Thomas O. Rice
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on _____, 2022, in the case of *MultiCare Health*
System v. CHS Washington Holdings, LLC, et al., No. 2:22-CV-00007 TOR. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____

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